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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,948	09/08/2003	Kailash C. Vasudeva	PAT 51403A-2	9002
26123 7590 03/23/2009 BORDEN LADNER GERVAIS LLP Anne Kinsman WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA				
EXAMINER RODRIGUEZ, RUTH C				
ART UNIT 3677		PAPER NUMBER		
NOTIFICATION DATE 03/23/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/656,948

Applicant(s)

VASUDEVA, KAILASH C.

Examiner

RUTH C. RODRIGUEZ

Art Unit

3677

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-22, 28-31 and 91-104 is/are pending in the application.
- 4a) Of the above claim(s) 4-22, 28-31 and 97-102 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 91-96, 103 and 104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I, Species II and sub-species 1 (Figs. 26-34 and 43A-46) in the reply filed on 25 April 2005 is acknowledged. The traversal is on the ground(s) that the method of manufacturing the elected flanges should also be examined with the elected flanges. This is not found persuasive because the search required for the flange assembly is found in class 285 but the search required for the method of making the flange assembly is found in class 29. The search of the elected flanges does not require the search of class 29. Therefore, the transversal presented by the Applicant fails to be persuasive.

The requirement is still deemed proper and is therefore made FINAL.

2. The Applicant requests examination of claims 97-102 directed to a method of manufacturing an exhaust flange. The Applicant argues that the method of manufacturing the elected flanges should also be examined with the elected flanges since the method claims are related to one of the embodiments being examined. This is not found persuasive because the search required for the flange assembly is found in class 285 but the search required for the method of making the flange assembly is found in class 29. The search of the elected flanges does not require the search of class 29. Therefore, the transversal presented by the Applicant fails to be persuasive. Additionally, the claims elected originally by the Applicant are directed to an article and the method claims were non-elected invention. As a result, the claims presented can

only be directed to Invention I, Species II and sub-species 1 (Figs. 26-34 and 43A-46) as elected on 25 April 2005.

3. Claims 4-22 and 28-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 April 2005.

4. Claims 97-102 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 April 2005.

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on 23 February 2009 has been considered by the examiner.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 91, 92, 94-96, 103 and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glauser et al. (US 4,081,083 A) in view of Medvick (SU 4,792,162 A).

Glauser discloses a two-part exhaust flange having a first portion (22) and a second portion (25) secured together (Figs. 3 and 4). The exhaust flange extends radially outwardly from a central opening for the first exhaust pipe (Figs. 3 and 4). Glauser fails to disclose that at least one of the first or second portions is manufactured of sintered powdered metal, and the second portion of a metal other than a sintered powdered metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first portion is manufactured of sintered powdered metal and that the second portion is manufactured of a metal other than a sintered powdered metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges manufactured of sintered powdered metal offer significant reduction in the manufacturing costs and provide a durable structure (C. 7, L. 25-31).

Glauser also discloses that:

- The exhaust flange has an element (25) shaped to receive an annular sealing gasket (29,30).
- The element shaped to receive an annular sealing gasket (29,30) in a recess (28,32) in the exhaust flange.
- One of the first and second portions has a cylindrical recess (where 25 is disposed) in one face thereof coaxial with the central opening (Figs. 1-5). The other of

the first and second portions has a cylindrical outer portion fitting within the cylindrical recess (Figs. 3-5).

- The other (25) of the first and second portions has a recess (28,32) therein shaped to receive an annular sealing gasket (Figs. 3-5).

Glauser discloses a two-part exhaust flange having a first portion (22) and a second portion (25) integrated together to form as a sealing member (Figs. 3-5). The , exhaust flange extends radially outwardly from a central opening for the first exhaust pipe (Figs. 3 and 4). Glauser fails to disclose that at least one of the first or second portions is manufactured of sintered powdered metal, and the second portion of a metal other than a sintered powdered metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first portion is manufactured of sintered powdered metal and that the second portion is manufactured of a metal other than a sintered powdered metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges manufactured of sintered powdered metal offer significant reduction in the manufacturing costs and provide a durable structure (C. 7, L. 25-31).

One of said first and second portions disclosed by Glauser has a cylindrical recess (receiving member 25) in one face thereof coaxial with the central opening (Figs. 3 and 4). The other of the first and second portions (25) has a cylindrical outer portion fitting within the cylindrical recess (Figs. 3 and 4).

8. Claims 91-93, 95, 96, 103 and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohlman. (US 5,944,319 A) in view of Medvick (SU 4,792,162 A).

Kohlman discloses a two-part exhaust flange having a first portion (12 or 14) and a second portion (22) secured together (Fig. 1). The exhaust flange extends radially outwardly from a central opening for the first exhaust pipe (Fig. 1). Glauser fails to disclose that at least one of the first or second portion is manufactured of sintered powdered metal, and the second portion of a metal other than a sintered powdered metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first portion is manufactured of sintered powdered metal and that the second portion is manufactured of a metal other than a sintered powdered metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges manufactured of sintered powdered metal offer significant reduction in the manufacturing costs and provide a durable structure (C. 7, L. 25-31).

Kohlman also discloses that:

- The exhaust flange has an element (22) shaped to receive an annular sealing gasket (48,50).
- The element shaped to receive an annular sealing gasket (48,50) is a recess (receiving 22) in the exhaust flange.

- One of the first and second portions has a cylindrical recess (where 22 is disposed) in one face thereof coaxial with the central opening (Fig. 1). The other of the first and second portions (22) has a cylindrical outer portion fitting within the cylindrical recess (Fig. 1).

- The other (25) of the first and second portions has a recess (28,32) therein shaped to receive an annular sealing gasket (Figs. 3-5).

Kohlman discloses a two-part exhaust flange having a first portion (12 or 14) and a second portion (22) integrated together to form as a sealing member (Fig. 1). The , exhaust flange extends radially outwardly from a central opening for the first exhaust pipe (Fig. 1). Kohlman fails to disclose that at least one of the first or second portion is manufactured of sintered powdered metal, and the second portion of a metal other than a sintered powdered metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first portion is manufactured of sintered powdered metal and that the second portion is manufactured of a metal other than a sintered powdered metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges manufactured of sintered powdered metal offer significant reduction in the manufacturing costs and provide a durable structure (C. 7, L. 25-31).

One of said first and second portions disclosed by Kohlman has a cylindrical recess (receiving member 22) in one face thereof coaxial with the central opening (Fig.

1). The other of the first and second portions (22) has a cylindrical outer portion fitting within the cylindrical recess (Fig. 1).

Response to Arguments

9. Applicant's arguments filed 03 December 2008 have been fully considered but they are not persuasive.

10. The Applicant argues that Glauser fails to disclose the claimed invention since the two parts are not secured together since the "threaded surfaces are connected and the sealing means 24 is disposed between the bearing surfaces". This argument fails to persuade. The claim is directed to a two-part exhaust flange but has an open-ended transitional phrase "having", therefore, Glauser can include additional structural elements as long as the claimed invention is met. In this case, the claim limitations of claim 91 are met because the first portion is secured to the second portion by the threaded engagement between the exhaust flange and a mating flange. This threaded engagement will secure the first portion and the second portion together since the threaded engagement will not allow movement of the second portion that is disposed between the mating flanges.

11. The argument presented against Kohlman is that the two pieces 12 and 14 form an assembly and not an exhaust flange. The Examiner fails to be persuaded by this argument. The rejection recites that the first portion is one of the flanges 12 or 14 while the second portion is the insert (22) that is disposed within the first portion. The claim

limitations are met when this interpretation is being made since the insert 22 is secured to an inner surface of the recess provided in one of the flanges 12 or 14.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RUTH C. RODRIGUEZ** whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor D. Batson can be reached on (571) 272-6987.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RCR/
Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
March 19, 2009

/Robert J. Sandy/
Primary Examiner, Art Unit 3677